2018 IL App (5th) 160104-U

NO. 5-16-0104

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re MARRIAGE OF	)	Appeal from the
	)	Circuit Court of
LORI A. KEY,	)	St. Clair County.
	)	
Petitioner-Appellee,	)	
	)	
and	)	No. 13-F-251
	)	
DANIEL M. KEY,	)	Honorable
	)	Julie K. Katz,
Respondent-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Where Lori Key did not abandon her 2006 petition to modify, we affirm the court's order awarding retroactive child support to 2006. Where the 2010 agreed-to order allowing Lori to move out of Illinois with the parties' child did not extinguish the 2006 petition to modify, the trial court's order to that effect was correct. Where the trial court did not shift the burden of proof to Daniel to establish a substantial change in circumstances, we affirm the court's orders. Where the trial court did not abuse its discretion in its calculation and award of retroactive child support, we affirm. Where the trial court did not abuse its discretion in awarding attorney fees, we affirm.

¶ 2 Daniel Key appeals from four separate trial court orders entered between December 31, 2015, and March 1, 2016. The orders all relate to whether retroactive child

support was appropriate; whether the calculations for retroactive child support were correct; and whether an attorney fees award was appropriate. We affirm the orders of the trial court.

¶ 3 FACTS

¶ 4 Franklin County Proceedings

¶ 5 Lori and Daniel were divorced on December 3, 1998, in Franklin County. Pursuant to the marital settlement agreement filed that same date, Lori was awarded custody of their daughter, who was then 18 months old. The court directed Daniel to pay $700 in monthly child support based upon his net income. At that time, Daniel was employed by the Illinois State Police, had family health insurance, and was a United States Army Reserve member.

¶ 6 In late July 2000, Daniel filed a petition to modify on the bases that he was no longer an Army Reserve member, that as of mid-July 2000 he was indefinitely suspended from employment with the Illinois State Police, and that he had no income. Lori utilized the services of the Illinois Department of Public Aid (IDPA) to assist her in obtaining the court-ordered support. In March 2001, IDPA sent the first withholding order to Daniel's then-employer, Edward D. Jones Company. By May 30, 2001, Daniel was delinquent in support by over $9000, and by October 30, 2001, the delinquency totaled $16,465. Between May 2001 and November 2002, the IDPA sent several income withholding orders to the following employers: the City of Sesser; the Illinois State Police; and Metlife. On January 9, 2002, the court entered an agreed-to order. Lori and Daniel agreed to extinguish all claims filed against each other, including Lori's claim for support

arrearage through December 31, 2001. Daniel also agreed to make monthly support payments of 20% of his net income.

¶ 7 In February 2003, IDPA filed a petition asking the court to hold Daniel in indirect civil contempt for not complying with the January 9, 2002, agreed-to child support order. IDPA intercepted an $87 unemployment insurance benefit in March 2002—the only child support funds received to that date. IDPA also filed a petition to modify support on Lori's behalf and on July 8, 2003, the trial court entered a default child support order. The court noted that Daniel's net income could not be established. On that basis, the court ordered Daniel to pay $400 per month based upon the reasonable needs of the child. Furthermore, the court ordered Daniel to pay Lori $80 per month for the child's health insurance.

¶ 8 On June 14, 2004, Daniel filed a petition to abate or modify support on the bases that he was attending law school, that he would not graduate until May 2005, and that his only income was in the form of student loans.

¶ 9 In 2005, IDPA began filing withholding orders in Iowa, where Daniel was then working. In February 2005, IDPA filed a withholding order and a medical support notice directed to a law firm in Cedar Rapids, Iowa. In March 2005, IDPA filed a withholding order and a medical support notice directed to Key Investigations International in Prairie du Chien, Wisconsin. On July 7, 2005, IDPA filed a petition for indirect civil contempt alleging that as of that date, Daniel had a support arrearage of $9600 and owed Lori $1920 to reimburse her for health insurance costs. That same date, the court entered an order to show cause directed to Daniel ordering him to appear in court on August 11, 2005. On that date, the court allowed Daniel an extension of time to file a new petition to

modify or abate and found him in indirect civil contempt. On August 23, 2005, the parties entered into an agreed-to order after Daniel paid the full amount of monies owed.

¶ 10 Soon after Daniel paid all arrearages owed through August 2005, in September 2005, he filed a second petition to modify the July 2003 child support order. He alleged a substantial change in circumstances had occurred since the 2003 order in that he had incurred student loan debt of $130,000.

¶ 11 In August 2006, Daniel asked the court to dismiss his petition to modify support, and the court entered that order on August 10, 2006. Lori then filed a petition to modify child support on August 23, 2006, alleging that Daniel's income had substantially increased and that the costs of raising their child had increased. At about the same time, Daniel filed a motion to transfer the case to St. Clair County because neither party lived in Franklin County.

¶ 12 In March 2007, Lori filed a citation to discover assets that was set for hearing in Franklin County. The record contains no reference that the court held this hearing.

¶ 13 In late 2008, Daniel opened his own law practice in Wisconsin and eventually became a municipal court judge.

¶ 14 In 2008 and 2009, the only child support documents in the record are income-withholding and health care coverage documents filed by the Illinois Department of Healthcare and Family Services—the Division of Child Support Enforcement (IDHFS).

¶ 15 On December 28, 2010, Lori and Daniel filed a stipulation and agreed-to order allowing Lori to move with their child to Atlanta, Georgia, for employment reasons. Lori and their child returned to St. Clair County in May 2011.

¶ 16 In February 2013, the case was transferred from Franklin County to St. Clair County after the trial court entered an order granting Daniel's motion to transfer.

¶ 17 St. Clair County Proceedings

¶ 18 On April 3, 2013, Lori filed a petition to hold Daniel in contempt of court for failing to pay his one-half share of their child's health-related expenses as mandated by the 1998 marital settlement agreement. Daniel countered with a motion for summary judgment alleging that he never knew about these health-related expenses, and therefore, he could not be expected to know the amounts he allegedly owed.

¶ 19 On May 24, 2013, Daniel filed his financial statement in this case. He alleged that his gross monthly total income was $1850 and his net monthly income was $1317.56, after payment of child support and taxes. Daniel listed monthly expenses totaling $1609. He listed numerous assets—a house, stocks, numerous firearms, a motorcycle, a boat, and three vehicles. He owed $5000 on one of the vehicles. He also listed law school loans totaling $152,450. Daniel attached income tax returns for 2011 and 2012, both reflecting negative income for those years.

¶ 20 1. Discovery Issues

¶ 21 Issues with discovery arose soon after the St. Clair County transfer. By July 2013, the court ordered Daniel to produce all documents used in preparing his 2012 income tax return as well as all cancelled checks included in the 2013 business bank account statements. Daniel objected to Lori's requests for financial documents dating back to her August 2006 petition to modify on the basis that she had not diligently pursued that 2006 petition. The trial court denied Daniel's objections in January 2014 and ordered him to

produce the documents within 60 days. Daniel did not produce the documents. In June 2014, the court overruled additional objections Daniel made in response to the discovery requests and again ordered him to produce the documents within 60 days. Daniel did not produce the documents. In September 2014, Lori filed a motion for sanctions, and on October 30, 2014, the trial court ordered Daniel to pay $1000 in attorney fees within 30 days. In December 2014, Lori filed a second motion for sanctions, alleging that the information received in late October from Daniel was incomplete in that various statements for the years 2006 to 2008 were missing. Additionally, Lori filed a second petition for contempt because Daniel had not yet paid the $1000 for attorney fees. The court ordered Daniel to produce the missing documents and to appear in court on December 31, 2014, to testify on the issue of the contempt petition.

¶ 22 On December 31, Daniel appeared and testified. In part, Daniel testified about the documents produced and his various assets, including bank accounts. During his testimony, he revealed that there was a previously undisclosed account—an Interest on Lawyer Trust Account (IOLTA). The court ordered him to produce the IOLTA account documents within 30 days and offered an *in camera* review if necessary. The court found Daniel in criminal contempt and sentenced him to seven days in jail plus a $1000 fine stayed pending timely compliance with all previous discovery requests and orders. Finally, the court set temporary child support for $1000 to begin January 2015 and reserved the right to determine if the support was current, retroactive, or a combination of the two.

¶ 23 In February 2015, Lori filed a third petition for contempt alleging that Daniel had failed to produce the IOLTA documents and a second motion to compel alleging that Daniel failed to produce documents requested in supplemental requests to produce. Ultimately, Daniel produced the requested documents on February 10, 2015, and March 11, 2015, the date on which the court heard Lori's motions for contempt and to compel. Lori filed an amended petition for contempt in late April 2015 because Daniel had not paid his one-half share of the health-related expenses. On May 6, 2015, Lori's attorney filed a petition for attorney fees.

¶ 24 2. Child Support Hearing and Orders

¶ 25 The court held a hearing on all pending petitions and motions in late October 2015. The hearing lasted seven days. The court entered its 11-page written order on December 31, 2015. Relevant testimony and exhibits from the hearing will be referenced in the court's holdings and our analysis of the issues on appeal.

¶ 26 In its order, the court initially dispensed with Daniel's argument that his agreement to the December 2010 Franklin County order allowing Lori to remove their child from Illinois equated to a satisfaction of all outstanding child support issues. The court stated that Daniel had no legal argument to oppose the move, as he did not live in Illinois. Furthermore, testimony at the hearing from Lori's former attorney supported the fact that there was no child support discussion in the negotiation of the agreed-to order.

¶ 27 Additionally, the court found that Daniel's testimony lacked credibility because of his failure to acknowledge assets he owned, coupled with his argumentative and

contradictory testimony at the hearing. The inconsistencies in testimony and documentation made determination of Daniel's income extraordinarily difficult.

¶ 28 The court concluded that Lori's exhibit outlining the proceeds of Daniel's legal business presented the more reliable indicator of Daniel's earnings. However, the court stated that it was reluctant to use the earnings from Lori's exhibit to determine statutory net income because of the contradictory exhibits and testimony Daniel provided. Therefore, the court found that it best to base child support on the needs of the child instead of on the undetermined statutory net income.

¶ 29 The court determined that the needs of the child amounted to approximately $1806 per month based upon financial affidavits filed by Lori throughout the duration of this case. Dividing that amount equally between the parents, the court held that Daniel was responsible for $900 monthly child support for a total of 68 months—a total of $61,200. The court found that because Lori did not actively pursue her petition to modify from September 17, 2009, to June 6, 2012, that she was not entitled to additional support during those months. During the 68 months at issue, Daniel had paid $480 per month—a total of $32,640. The court also subtracted the $4600 in child support Daniel paid from January 1 through December 31, 2015. The court entered judgment against Daniel and in favor of Lori for $23,960 for child support arrearages.

¶ 30 Finally, the court found that Daniel was responsible for a portion of Lori's attorney fees (with the amount to be determined on a later date) and owed Lori $1887 in unreimbursed medical expenses.

¶ 31 Daniel filed a motion to reconsider the court's December 31, 2015, judgment. On February 24, 2016, the court partially granted Daniel's motion and agreed to utilize the child's "reasonable needs" to calculate support from 2010 through 2014 and to use his W-2s to determine net income from 2006 through 2009 based upon Daniel's claim that he became self-employed in 2010. Thereafter, on February 29, 2016, the court entered its order on the issues of child support arrearages, attorney fees, and contempt of court. The court reviewed the documents again and determined that Daniel actually became self-employed in 2008. Additionally, there was no W-2 in the record for 2006. The court based the child support obligation from August 2006 until December 2006 on his 2007 earnings as reflected in his 2007 W-2 and determined that Daniel owed $1100.70 per month from August 2006 through December 2007. The court also concluded that Daniel owed $656.21 in monthly child support for 2008 based upon his 2008 W-2. During the periods of time that Daniel was self-employed, the court reverted to its $900 per month calculation based upon the reasonable needs of the child because the court could not accurately calculate Daniel's net income. The court entered judgment for child support arrearage for $23,079.93. The court also entered judgment in favor of Lori's attorney, Susan Parnell Wilson, for $25,596.11 in attorney fees.

¶ 32 On March 1, 2016, the court entered a supplemental order allowing Daniel a $1000 credit for previously paid attorney fees and modified the judgment to $24,596.11.

¶ 33 Daniel timely filed his notice of appeal from these orders.

¶ 34 LAW AND ANALYSIS

¶ 35 Daniel raises several issues on appeal stemming from the court's 2015 and 2016 orders modifying the amount of child support owed and entering judgment on the resulting arrearage and from the judgment awarding attorney fees. Daniel alternatively argues two theories that the trial court should not have considered Lori's 2006 petition to modify: (1) that Lori abandoned her 2006 petition to modify the child support amount; or (2) that the 2010 agreed-to order allowing removal of the child from Illinois dispensed with the 2006 petition to modify. He also contends that because the trial court required him to provide correct income information, the trial court improperly shifted the burden to him to prove that there was no substantial change in circumstances warranting a modification of child support. In addition, Daniel claims that the trial court erred in calculating his net income from 2006 through 2008 and erred in concluding that it could not calculate his net income from 2009 through 2014. Finally, Daniel argues that the trial court should not have awarded attorney fees.

¶ 36 Abandoned Pleadings and 2010 Order to Remove Child from Illinois

¶ 37 First we note that the importance of the abandoned pleading argument is that if Lori abandoned her 2006 pleading, the court should not have considered increased child support retroactive to 2006. This is Daniel's primary argument on appeal. Alternatively, he claims that the court should have only considered her petition from one of two dates: from March 2013 when the case was transferred to St. Clair County; or from January 2014 when the court entered its first order directing Daniel to provide discovery.

¶ 38 Daniel's abandoned pleading theory conflates two separate petitions filed in Franklin County in 2006. Lori filed the first pleading in August asking the court to modify the child support award. One week later, Daniel filed his motion to transfer venue from Franklin County to St. Clair County. In his argument that Lori abandoned her child support petition, Daniel starts with the premise that Lori should have known that he abandoned his venue transfer petition because he never set the transfer petition for hearing and because he agreed to the 2010 child removal order. He then concludes that because Lori did not pursue discovery or a hearing on her petition and because she did not "reserve" the issue of child support in the agreed-to 2010 order, she also intended to abandon her 2006 petition to modify. We find no legal basis or logic in this conclusion.

¶ 39 The trial court's December 31, 2015, order did not directly address the "abandoned pleading" argument. However, the court implicitly concluded that the theory was meritless because Lori's pursuit of child support did not stop after she filed the petition in 2006. The court noted that Lori filed a citation to discover assets. Thereafter the IDHFS consistently represented Lori through September 2009 in pursuit of child support. From September 2009 until June 2012, IDHFS did not actively pursue child support from Daniel. However, in June 2012, IDHFS renewed its involvement in this case and informed Lori that it would attempt to obtain a modification of the child support order on her behalf.

¶ 40 Regarding the 2010 order, the trial court stated that there was no substance to Daniel's argument that the 2010 order dispensed with the earlier 2006 child support modification petition. In support, the court stated that Daniel could not have objected to

the 2010 order because Daniel already lived outside of Illinois and so the visitation schedule was already structured to accommodate the geographic distance between the parents. Additionally, the court stated that the testimony of Lori's former attorney, who negotiated the 2010 order on her behalf, affirmed that there was no mention of child support during the negotiations.

¶ 41 In support of his abandoned pleading argument, Daniel cites to two cases involving abandoned pleadings. We have reviewed both cases. Neither case holds that a pleading was abandoned but merely cites to the general rule.

¶ 42 The first case, *Majewski v. Von Bergan*, was a medical malpractice case in which the court dismissed plaintiff's case for failure to file the mandatory procedural affidavit. *Majewski v. Von Bergan*, 266 Ill. App. 3d 140, 142, 638 N.E.2d 1189, 1191 (1994). The case was originally filed in Cook County and then was transferred to and docketed in Lake County. *Id.* at 141. Defendants' motion to dismiss was filed while the case was in Cook County. *Id.* at 141-42. After transfer to Lake County, plaintiff filed a voluntary dismissal in Cook County. *Id.* Thereafter, defendants' motion to dismiss was called for hearing in Lake County and the court dismissed the complaint with prejudice. *Id.* at 142. On appeal, the court held that Cook County lacked jurisdiction to grant plaintiff's motion to voluntarily dismiss after the case was docketed in Lake County. *Id.* at 132. While the court stated that "[w]here no ruling appears to have been made on a motion, the presumption is that the motion was waived or abandoned," the context was whether plaintiff abandoned his motion to voluntarily dismiss after it was transferred to Lake County because he did not schedule the motion for hearing in Lake County. *Id.* at 144.

The court stated this general rule as further support that the Lake County court was not required to prioritize plaintiff's unscheduled motion to dismiss over the defendants' scheduled motion to dismiss. *Id.* Ultimately, the court did not affirmatively hold that plaintiff abandoned his motion.

¶ 43 The second case, *Mortgage Electronic Systems v. Gipson*, 379 Ill. App. 3d 622, 884 N.E.2d 796 (2008), is a mortgage foreclosure case. Defendant appealed from the court's confirmation of the foreclosure and judicial sale after the mortgage company took a default judgment against defendant. *Id.* at 624. Defendant claimed that she was not personally served and, therefore, the trial court did not have personal jurisdiction. *Id.* Before the trial court entered judgment against defendant, she filed a motion to quash the service of summons but did not set a hearing date. *Id.* at 628. Defendant did not appear at the court's next status hearing, and the court entered its default judgment on the foreclosure. *Id.* On appeal, the court addressed the personal jurisdiction issue and stated that a trial court's failure to rule on a motion does not constitute a denial of the motion. *Id.* The court also stated that there is a presumption that if there is no ruling on a motion that the motion was abandoned " 'absent circumstances indicating otherwise.' " *Id.* (quoting *Rodriguez v. Illinois Prisoner Review Board*, 376 Ill. App. 3d 429, 433, 876 N.E.2d 659, 663 (2007)). However, the court did not rule that defendant abandoned her motion to quash. The appellate court surmised that the trial court and the plaintiff believed that defendant's failure to appear at the status hearing constituted defendant's "submission to the court's jurisdiction which would validate any potential defect in the court's personal jurisdiction." *Id.* at 629. Noting that waiver of jurisdiction is only

prospective, the court held that the trial court's default judgment was premature because defendant's waiver or abandonment of the jurisdiction issue must have been complete before the trial court could enter a default judgment. *Id.* at 632 (citing *In re Marriage of Verdung*, 126 Ill. 2d 542, 547, 535 N.E.2d 818, 820 (1989)). Contrary to Daniel's reliance on *Mortgage Electronic Systems v. Gipson*, the court did not hold that if a party failed to set a hearing on a motion that the party abandoned the pleading.

¶ 44 In response, Lori contends that the Second Judicial Circuit Court local Rule 9 is relevant to this issue. Rule 9(I) states that the burden to set a hearing on a motion lies with the moving party. If the motion has been on file for 90 days and no hearing date has been set, the trial court can set a hearing date. Additionally, the nonmoving party may always set the motion for hearing. http://www.illinoissecondcircuit.info/local-court-rules#1. Based upon this rule, Franklin County circuit court had the power to set a hearing date on Lori's petition to modify. The court did not. Furthermore, Daniel had the power to set a hearing date on Lori's petition to modify. He did not. The rules do not contain a set time frame within which a motion must be called for hearing.

¶ 45 In this case, IDHFS made numerous efforts to obtain child support on Lori's behalf after 2006 and ultimately sought a modification of the original support order. Once the case was transferred to St. Clair County, discovery began and the motion was heard. We conclude that Lori did not abandon her 2006 petition to modify and we affirm the court's ruling.

¶ 46 Daniel alternatively claims that the 2010 order allowing Lori to move with their child to Georgia disposed of the 2006 child support petition. Daniel seems to be

advancing a theory that the 2010 order resolved any outstanding motion. We conclude that this argument is not supported in law or in fact. The 2010 order in the record contains no reference to the child support issue. Furthermore, testimony at the hearing established that the parties did not discuss child support in negotiating the agreed-to order. In addition, the two cases Daniel cites in support are not on point. In both cases, the movant filed a petition seeking ongoing support as well as retroactive support. The courts would not grant retroactive support because the petition was the first petition filed and there was no existing child support order on file. See *Conner v. Watkins*, 158 Ill. App. 3d 759, 511 N.E.2d 200 (1987); *Nerini v. Nerini*, 140 Ill. App. 3d 848, 488 N.E.2d 1379 (1986). The cases do not support the procedural theory Daniel advances—that an order addressing a specific motion serves to close out any other outstanding motion.

¶ 47 Modification of Child Support

¶ 48 We will not reverse a trial court's modification of child support order unless we conclude that the trial court abused its discretion. *In re Marriage of Rogers*, 213 Ill. 2d 129, 136, 820 N.E.2d 386, 389 (2004) (citing *In re Marriage of Bussey*, 108 Ill. 2d 286, 296, 483 N.E.2d 1229, 1233 (1985)). An abuse of discretion occurs if no reasonable person would agree with the trial court's order. *In re Marriage of Partney*, 212 Ill. App. 3d 586, 590, 571 N.E.2d 266, 269 (1991).

¶ 49 Pursuant to section 510(a)(1) of the Illinois Marriage and Dissolution of Marriage Act (750 ILCS 5/510(a)(1) (West 2014)), a child support order can be modified upon a showing of a substantial change of circumstances. The party seeking the modification bears the burden to establish that there has been both a change in the child's needs as well

as a change in the noncustodial parent's ability to pay the increased amount. *In re Marriage of Sweet*, 316 Ill. App. 3d 101, 105, 735 N.E.2d 1037, 1041 (2000).

¶ 50 In 2000, when the Franklin County circuit court made the initial child support order, the trial court awarded $700 in monthly support based upon Daniel's net income. In 2003, the court revisited the issue but could not determine Daniel's net income, and so the court modified the monthly child support amount to $400 per month based upon the reasonable needs of the child. The child support order at issue in this appeal was also based upon the reasonable needs of the child for some of the years at issue where there was inadequate information to establish Daniel's net income.

¶ 51 1. Change in Noncustodial Parent's Ability to Pay

¶ 52 Daniel's argument on appeal is that the trial court shifted the burden of proof to him, in that he was required to prove his income in order to establish the substantial change in his ability to pay an increased amount. He points to a sentence in the court's December 31, 2015, order stating that "[Daniel] took no responsibility for his failure to present an accurate representation of his income."

¶ 53 In response, Lori outlines the discovery problems she had in this case. Daniel provided incomplete documentation and fought her attempts to obtain additional discovery. Specifically, Lori noted that Daniel's tax returns did not match up with his other income documentation and that Daniel did not opt to have an accountant provide testimony about his income. Lori argues that once she presented what documentation Daniel produced and also established the discovery issues experienced, the burden shifted to Daniel if he wanted to establish a different picture of his income to the court. See *In re*

Marriage of Taylor, 89 Ill. App. 3d 278, 283, 411 N.E.2d 950, 954 (1980) (holding that after the movant presented evidence on why the respondent should pay child support, the respondent then has the burden of going forward with evidence to equally balance the petitioner's evidence).

¶ 54 We have reviewed the exhibits introduced in the hearing and see the difficulties faced by Lori and the trial court. In the earlier years when Daniel was employed as an attorney in a law firm, he had year-end income tax W-2 documents that accurately established Daniel's income for these years. The problem with determining Daniel's income began when he went into private practice. From those years, Daniel's tax returns reflected negative adjusted and net incomes but were in opposition to other documents he produced that contained different income totals. During testimony, Daniel would argue that his numbers were the same as in Lori's exhibits but then disagree with numbers in Lori's exhibits. At one point, Daniel testified that an accountant prepared his tax returns, only to later admit that he prepared them himself. He testified that his income tax returns would be accurate but that there could be income summaries that were more accurate for computing child support. Daniel testified that he did not know what all of the documents were and that he did not know which income statement was accurate.

¶ 55 We find that it is important to note that a court may consider a party's credibility and truthfulness in determining net income for child support. *In re Marriage of Karonis*, 296 Ill. App. 3d 86, 92, 693 N.E.2d 1282, 1287 (1998). If a party has been less than forthright in discovery, the court may consider this fact in determining the weight given to the evidence of income. *In re Marriage of Olson*, 223 Ill. App. 3d 636, 652, 585

N.E.2d 1082, 1093 (1992). If the court cannot determine the party's income, the court may award an amount reasonable under those circumstances. *In re Marriage of Sweet*, 316 Ill. App. 3d at 109.

¶ 56 Returning to Daniel's argument that the trial court shifted the burden of income determination to him, we disagree. From a reading of the entire paragraph containing the sentence at issue, the trial court was referencing Daniel's numerous discovery abuses in refusing to provide the requested documentation. Those discovery abuses made it difficult, if not impossible, for Lori to establish his income during each of the years at issue.

¶ 57 For the years that Daniel had W-2 reported income, the trial court used those amounts. However, for a majority of the time period at issue, when the figures produced were conflicting and incapable of being authenticated and confirmed, the court based its monthly support amount on an allowable alternate basis—the needs of the child.

¶ 58 Although, in ordering child support, the court typically makes a determination of the noncustodial parent's income and then applies the statutory and regulatory percentage required, our legislature effected provisions for situations where the court could not accurately determine income. Section 505(a)(5) of the Illinois Marriage and Dissolution of Marriage Act states: "If the net income cannot be determined because of default or any other reason, the court shall order support in an amount considered reasonable in the particular case." 750 ILCS 5/505(a)(5) (West 2014).

¶ 59 The "reasonable needs" approach has been applied in cases where the court concluded that the testimony and evidence regarding income was not credible. We briefly review two of these cases.

¶ 60 In *In re Marriage of Takata*, the mother filed a petition to increase child support and the father filed a petition to decrease child support. *In re Marriage of Takata*, 304 Ill. App. 3d 85, 90, 709 N.E.2d 715, 719 (1999). Prior to the dissolution, the father earned $30,000 per year, while subsequent to the dissolution, he claimed to earn $18,000 per year. *Id.* At the hearing, the father testified that he earned income that he did not report to the Internal Revenue Service or to the court. *Id.* The trial court found that there was no material change in circumstances despite the father's claims of reduced income. In support, the trial court noted that the father's testimony was not credible and stated that it could not determine the father's accurate income. *Id.* at 91. The trial court concluded that because it could not determine the father's income and use the statutory guidelines to set support, the support amount would be based on the reasonable needs of the children. *Id.* The trial court set the father's child support obligation at one-half of the reasonable expense of the children. *Id.* On appeal, the appellate court concluded that under the circumstances, the trial court was forced to make a child support award that was reasonable. *Id.* at 96 (citing *In re Marriage of Severino*, 298 Ill. App. 3d 224, 230-31, 698 N.E.2d 193, 197-98 (1998)).

¶ 61 Similarly in *In re Marriage of Sweet*, the mother filed a petition to modify alleging that the children's expenses had increased. *In re Marriage of Sweet*, 316 Ill. App. 3d at 103. During the hearing, the father testified that he falsified his self-employment income

in a loan application. *Id.* The trial court increased the child support award noting that the father had either falsified his bank loan application or lied about his income in court. *Id.* at 104. On appeal, the father argued that there was no evidence supporting a substantial change of circumstances in his ability to pay. *Id.* at 105. The appellate court affirmed and stated that if a court is unable to determine the father's income, it may award an amount that is "reasonable under the circumstances." *Id.* at 109 (citing *In re Marriage of Takata*, 304 Ill. App. 3d at 96; 750 ILCS 5/505(a)(5) (West 1998)).

¶ 62 We find that the trial court did not shift the burden to Daniel to establish that his ability to pay had substantially changed. The trial court attempted to determine Daniel's income but ultimately opted for the reasonable needs approach. Under the circumstances, we see no error in the trial court's approach.

¶ 63 2. Change in Child's Needs

¶ 64 Daniel does not contest the child's needs substantially changed. However, we briefly address the second requirement for modification of child support—that there has been a change in the child's needs. *In re Marriage of Sweet*, 316 Ill. App. 3d at 105. Lori filed three financial statements over the course of these proceedings that contained the monthly expenses she paid for the child. The three amounts were $1923.74, $1690.74, and $1801.94. In the court's December 31, 2015, order, the three amounts were averaged to $1805.47 in monthly expenses for the child. Lori's evidence, in the form of testimony and financial affidavits, can be sufficient to support her claim that the needs of her child had increased since 2003. See *id.* (concluding that testimony, without specific dollar amount documentation, that the children's expenses had increased with food, clothing,

and social activities, was sufficient for the court's conclusion that there had been a substantial change of circumstances). In July 2003, the Franklin County circuit court entered its order that child support would be based on the needs of the child and ordered Daniel to pay $480 per month. In this case, the court's order was supported by Lori's testimony and the financial statements filed in this case. We find no basis to conclude that the trial court abused its discretion in finding that there was a substantial change in the child's needs.

¶ 65 3. The Calculations

¶ 66 The court held that retroactive child support from August 2006 through December 2008 must be based upon Daniel's W-2 wages or other documents establishing net income as opposed to the reasonable needs of the child. The court noted that Daniel never produced his 2006 income tax returns, and thus the court based his child support obligation from August 2006 through December 2006—five months—on the income Daniel earned and established by W-2 in 2007. Based upon Daniel's net 2007 income of $66,042, the court calculated Daniel's net income for the 16 months between August 2006 and December 2007 at $5503.50 per month. The statutory 20% child support amount was $1100.70 per month or $17,611.20 for the 16 months. 750 ILCS 5/505(a)(1) (West 2008). The court found that that Daniel's net income in 2008 was $39,372.46, or $3281.04 per month. The statutory 20% child support amount was $656.21 per month or $7874.52 for the 12 months. *Id.*

¶ 67 From January 2009 through September 2009, Daniel remained self-employed. The court could not ascertain Daniel's annual income with any degree of accuracy and

therefore based its child support award on the reasonable needs of the child. 750 ILCS 5/505(a)(5) (West 2010). The trial court set the monthly amount at $900 for a total of $8100 for the nine months.

¶ 68 From October 2009 through May 2011, Lori and the IDHFS did not actively pursue child support from Daniel. Therefore, the court did not award any child support over the $480 per month the Franklin County circuit court ordered Daniel to pay in the 2003 order. See *In re Marriage of Carpel*, 232 Ill. App. 3d 806, 820, 597 N.E.2d 847, 858 (1992) (finding that the court did not abuse its discretion in denying retroactive support because the claim was not pursued).

¶ 69 From June 2012 through December 2014, Daniel was self-employed. As Daniel's annual income could not accurately be determined, the court awarded child support of $900 per month based upon the reasonable needs of the child. 750 ILCS 5/505(a)(5) (West 2010). The total awarded for those 31 months was $27,900.

¶ 70 The trial court calculated the total amount of retroactive child support at $61,485.72. From that total, the court subtracted $32,640 that Daniel had already paid. Additionally, the court subtracted $5765.79 Daniel paid after January 2015. The resulting amount owed was $23,079.93, and the court entered judgment in that amount.

¶ 71 We have thoroughly reviewed the record on appeal and can find no basis to conclude that the trial court abused its discretion in awarding Lori $23,079.93 in retroactive child support. *In re Marriage of Rogers*, 213 Ill. 2d at 136. We affirm the court's judgment.

¶ 72 Attorney Fees

¶ 73 Finally, Daniel argues that the trial court committed error in awarding attorney fees to Lori's attorney.

¶ 74 On appeal of an attorney fees award, we will not reverse unless we conclude that the trial court abused its discretion. *In re Marriage of Uehlein*, 265 Ill. App. 3d 1080, 1090, 638 N.E.2d 706, 715 (1994). The law presumes that a party will pay his or her own attorney fees. *In re Marriage of Sanborn*, 78 Ill. App. 3d 146, 152, 396 N.E.2d 1192, 1197 (1979). In this case, the trial court based its decision to award attorney fees on section 508(b) of the Illinois Marriage and Dissolution of Marriage Act (Act) (750 ILCS 5/508(b) (West 2014)) and Illinois Supreme Court Rule 219 (eff. July 1, 2002). Both the statutory section and the supreme court rule authorize an award of attorney fees as a consequential penalty for failing or refusing to comply with discovery rules and orders. Section 508(b) states: "If non-compliance is with respect to a discovery order, the non-compliance is presumptively without compelling cause or justification, and the presumption may only be rebutted by clear and convincing evidence." 750 ILCS 5/508(b) (West 2014); see also *In re Marriage of Putzler*, 2013 IL App (2d) 120551, 985 N.E.2d 602; *In re Marriage of Bradley*, 2013 IL App (5th) 100217, 993 N.E.2d 25. Imposition of attorney fees pursuant to section 508 of the Act is mandatory:

> "In every proceeding for the enforcement of an order or judgment when the court finds that the failure to comply with the order or judgment was without compelling cause or justification, the court shall order the party against whom the proceeding

is brought to pay promptly the costs and reasonable attorney's fees of the prevailing party." 750 ILCS 5/508(b) (West 2014).

¶ 75 Illinois Supreme Court Rule 219 has similar mandatory language:

"[I]f a party fails to answer any interrogatory served upon him or her, or to comply with a request for the production of documents ***, the proponent of the question or interrogatory *** may *** move for an order compelling an answer or compliance with the request. If the court finds that the refusal or failure was without substantial justification, the court shall require the offending party *** to pay to the aggrieved party the amount of the reasonable expenses incurred in obtaining the order, including reasonable attorney's fees." Ill. S. Ct. R. 219(a) (eff. July 1, 2002).

¶ 76 Daniel argues that the trial court should not have awarded attorney fees because this case presented a complicated financial picture that necessitated a large amount of discovery. Furthermore, Daniel contends that the type and volume of financial records produced would have required many hours of analysis. Essentially, his argument is that not all of the hours spent by Lori's attorney were connected to the discovery issues.

¶ 77 We have reviewed the record on appeal and agree that the records requested were financial in content—primarily bank statements and loan documents. However, we find Daniel's efforts to minimize the discovery issues to be somewhat disingenuous. Daniel repeatedly thwarted Lori's discovery efforts by objecting to requests, refusing to respond to requests, and ultimately providing incomplete and inconsistent documents. Daniel produced virtually no discovery without motions to compel and/or for contempt.

Presumably, this reluctance to comply with discovery requests reflected some sort of defensive strategy. No matter what led Daniel to act in this manner, he bears responsibility for the resulting outcome.

¶ 78 We find no basis in the court records and the hearing transcript to conclude that the trial court abused its discretion in awarding $24,596.11 in attorney fees.

¶ 79 CONCLUSION

¶ 80 For the reasons stated in this order, we affirm the judgments of the St. Clair County circuit court.

¶ 81 Affirmed.